



STATE ETHICS COMMISSION BULLETIN

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The Complaint Process

Anyone may call, write or visit the Commission to make a complaint regarding an alleged violation of the conflict of interest or financial disclosure law. Once a complaint is received, all Commission proceedings and records relating to the complaint are confidential by law.

The Enforcement Division reviews each complaint it receives. If the complaint falls within the Commission's jurisdiction, an initial "screening" or informal investigation is done to determine if the facts warrant a formal investigation. The screening is an informal fact gathering stage. After the screening, if the staff determines a case should be formally investigated, authorization is sought from the Commissioners to conduct a Preliminary Inquiry. During the Preliminary Inquiry the Commission staff has summons powers for testimony under oath.

Many enforcement cases end confidentially at the conclusion of the screening with a private educational letter sent to the subject of the investigation. In these

cases, no formal charge of a violation is brought and the matter remains confidential.

After a preliminary inquiry is conducted, the Commissioners vote on whether "reasonable cause" exists to believe that the law has been violated. If the Commissioners find "reasonable cause," the subject of the complaint

is entitled to a public hearing before the Commission to present evidence and testimony on his own behalf. At the conclusion of a public hearing the Commissioners issue a Decision and Order stating whether there was a violation of the conflict law and what fine, if any, will be assessed. A person has the right to appeal the Commission's decision directly to Superior Court. In the alternative, the person may settle the case by admitting publicly that he or she violated the law and agreeing to pay a civil penalty.

If the Commission finds "no reasonable cause" to believe the law

has been violated, the case is closed and records and proceedings of the investigation remain confidential.

Enforcement FY 2007

The Enforcement Division received 1,024 complaints in FY 2007 alleging violations of the conflict of interest law. The Enforcement Division closed 642 complaints because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. The division consolidated 36 complaints with existing cases and resolved 244 cases with private educational letters without any investigation. The Enforcement Division initiated 76 investigations and concluded 85 formal inquiries. The Division issued 10 orders to show cause initiating public hearings and negotiated 23 Disposition Agreements. There was also one adjudicatory hearing. Fines totalling \$85,500 and forfeitures totalling \$31,400 were collected.

Executive Director Peter Sturges Steps Down

Executive Director Peter Sturges stepped down from the State Ethics Commission effective July 31, 2007. Mr. Sturges, a Cambridge resident, served as the Commission's executive director for nearly seven years.

Prior to joining the Commission, he served as general counsel for the Office of Campaign and Political Finance for 10 years. He also served as a Cambridge Election Commissioner and held a number of other positions in state government.

Under Mr. Sturges' leadership, the Commission provided guidance, advice and education to over 60,000 public officials, audited about 30,000 financial disclosure forms and reviewed, investigated, or prosecuted approximately 6,000 enforcement matters. At the same time, staff eliminated the backlog of legal opinions and enforcement cases through structural reorganizations and management initiatives, the creation of internship programs with local universities, and the financial support of the Legislature and the

Continued on page 2

Table of Contents

The Complaint Process	1
Executive Director Leaving	1
Letter from the Executive Director	2
Regulations Hearing Scheduled	2
Recent Enforcement Actions	3
Section by Section	3
Staff Notes	5
Online Training	5

From the Executive Director

"Goodbye and Thank You"

As the executive director of the Ethics Commission for the past six and a half years, I have had the privilege to serve the people of Massachusetts and to work with an extraordinarily dedicated and talented staff.

During my tenure as executive director, I have devoted my energies to fulfilling the commission's mission to provide guidance, advice, and education to public officials and to enforce the law vigorously and fairly. In carrying out this mission, there have been many significant accomplishments and innovations.

These accomplishments could not have happened without the support and hard work of the staff, many of whom have devoted much of their professional careers to the commission. Together, we have been committed to upholding the highest standards of integrity and professionalism and constantly striving for excellence in our public service. For the staff's past and continued service, I am grateful, not only as executive director, but as a citizen of the Commonwealth.

Credit must also go to the commission's many constituencies that include elected and appointed officials, municipal organizations, advocacy groups, and attorneys in both the public and private sectors who work with the conflict of interest and financial disclosure laws. Their support has been invaluable.

Finally, I want to express my appreciation to the many commissioners for whom I have served for their strong commitment to the Commission's mission and for their dedicated service to the Commonwealth.

I trust that my tenure as executive director will be viewed by the Commission and the public as one that upheld and strengthened the commission's reputation for access, integrity and fairness.

Peter Sturges

Commission Members Summer, 2007

E. George Daher, Chair
Tracey Maclin
Matthew N. Kane
Jeanne M. Kempthorne
David L. Veator

Carol Carson
Editor

Commission Holds Hearing on Regulations

Proposed regulations, 930 CMR 5.00, were the subject of a public hearing held on Wednesday, July 25, 2007. The proposed regulations provide exemptions to certain sections of the conflict of interest law.

Testimony was heard from Beth Loud, on behalf of Common Cause, attorney Carl Valvo of Cosgrove, Eisenberg and Kiley, P.C. and Brighton resident Michael Pahre.

This marks the first time that the Commission has approved regulations for comment pursuant to Chapter 399, which grants the Commission authority to issue such regulations. Legislation granting the State Ethics Commission authority to promulgate regulations was first recommended in 1995 by the Special Commission on Ethics, created by the legislature; it wasn't until 2004, however, that legislation was passed.

The proposed regulations include exemptions related to public employ-

ees receiving gifts, benefits and payments of travel and admissions; state employees receiving payments from the Department of Social Services; and public employees participating in and disclosing interests in school fees.

Copies of the proposed regulations were sent via e-mail to individuals who expressed an interest in them. In addition, the proposed regulations are posted on the State Ethics Commission's web site at <http://www.mass.gov/ethics/proposed-regulations.pdf>.

Hard copies of the proposed regulations may be obtained from the State Ethics Commission, 617-371-9501, 1 Ashburton Place, Room 619, Boston, MA 02108.

Written comments are being accepted until August 3, 2007 and should be sent to the Ethics Commission. Alternatively, comments may be emailed to ccarson@eth.state.ma.us or faxed to 617-723-5851.

Continued from page 1

Administration.

The Commission also implemented a number of technological improvements to modernize its operations. These improvements have included the development of a state of the art electronic filing system for statements of financial interests by public employees, an interactive online training program about the conflict of interest law, and a case management database that has dramatically enhanced the commission's informational systems. There has also been a comprehensive revision of the commission's educational materials and website.

For the first time since the commission's creation in 1978, legislation was enacted in 2004 granting the commission regulatory powers under the conflict of interest law. As a result, the Commission is now in the process of promulgating its first set of regulations designed to create reasonable exemptions to the conflict of interest law. In addition, the Commission is pursuing a significant legislative initiative to clarify, simplify and update the conflict of interest and financial

disclosure laws. This legislation, which has support from a number of legislators, advocates, and public officials, will also increase the commission's enforcement powers.

Beginning in 2001, the commission began to develop a more vigorous enforcement agenda. Staff training and other initiatives resulted in more adjudicatory proceedings, as well as substantially higher penalties and restitution in cases involving serious violations of the law. The Commission successfully defended every judicial challenge to its decisions or authority. Among the court decisions were two unanimous appellate court opinions upholding the commission's summons authority and practice.

Most importantly, the more vigorous enforcement agenda and the various management improvements have not diminished the integrity and impartiality of the commission's enforcement actions. An independent consultant who was given total access to the commission's enforcement case files stated in his report that the commission's "staff is driven by the principle of fair and impartial justice, no matter who is the subject or what is the allegation."

Recent Enforcement Matters

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly.

A decision and order concludes an adjudicatory proceeding or civil trial. The decision is a finding by the Commission that the law was or was not violated and the order determines the civil penalty or other remedy, if any. The Commission's decision may be appealed in Superior Court.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and agrees to pay a civil penalty. Disposition agreements are matters of public record once a case is concluded.

A public education letter (PEL) is issued where the Commission found reasonable cause to believe that the law was violated but chose to resolve the case with a PEL because it believes the public interest would best be served by doing so. A PEL does not require the subject to admit violating the law and is issued publicly with the subject's consent.

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Full texts of Disposition Agreements can be found on the Commission's website at www.mass.gov/ethics.

In the Matter of David Aragona - The Commission found reasonable cause to believe that Massachusetts Convention Center Authority (MCCA)

sound technician David Aragona violated § 23(b)(2) the conflict of interest law by attending meetings of the Board of State Examiners of Electricians while he was on MCCA time and receiving MCCA compensation. The Commission concluded its review of this matter with the issuance of a Public Education Letter. According to the letter, beginning in 2002, Aragona, who is scheduled to work from 6:00 a.m. to 2:00 p.m., attended meetings of the Electricians Board during those hours. The Electricians Board meets once a month from approximately 10:00 a.m. to 3:30 p.m. Aragona did not receive written approval from his appointing authority to attend the Electrician Board meetings on MCCA time. In 1998, the Commission ruled that a public official would not violate § 23(b)(2) by using state time and resources to perform duties for a private non-profit association provided that the public official's appointing authority approved the arrangement in writing and specified that the following three conditions were met: (1) the duties were in furtherance of the public interest; (2) the duties were interconnected with the public official's duties and (3) the duties were not used toward partisan political ends. The Public Education Letter

notes that the same three conditions must be met when a public official is using state time and resources for another public position and emphasizes the importance of written approval.

In the Matter of Edward Cataldo - The Commission issued a Disposition Agreement in which Leominster Building Department Director of Inspections Edward Cataldo admitted violating the state's conflict of interest law and agreed to pay a fine of \$3,300, made up of a \$3,000 civil penalty and a \$300 civil forfeiture. Cataldo has a private business, Energy Plus. In 2001 and 2002, he advertised his private business through a flier taped to the Building Department front counter. The flier was also distributed to permit applicants. On six occasions, Cataldo produced energy code audit reports for private clients of his business. Cataldo's clients submitted the reports produced by Cataldo to the building department along with building permit applications. Such reports are required as part of the local building permit process and were reviewed by a building inspector prior to issuing a building permit. Cataldo earned \$50 for each report. In one instance, Cataldo, as Director of Inspections, reviewed an energy code audit report that he had been paid privately to produce. By receiving compensation from his clients for energy code audit reports that were then submitted with building permits, Cataldo violated § 17(a). By reviewing the energy code audit report that he had been paid privately to produce, Cataldo violated § 19. By using his position to advertise his private business, Cataldo violated § 23(b)(2).

In the Matter of Paul Cokinos - The Commission issued a Disposition Agreement in which developer Paul Cokinos admitted violating the state's conflict of interest law and agreed to pay a civil penalty of \$2,000. Cokinos violated G.L. c. 268A, § 17(b) by, in spring 2005, paying Rockland Conservation Commissioner Kenneth Karlson \$10,000 to perform excavation work on a construction project at the Massachusetts Sports Club. In summer 2004, Karlson

Continued on page 4

SECTION BY SECTION THE CONFLICT OF INTEREST LAW, G. L. c. 268A

- Section 17(a) of the conflict law prohibits a municipal employee from receiving compensation from anyone other than the town in relation to particular matters in which the city has an interest.
- Section 17(b) of the conflict law prohibits anyone from compensating a municipal employee in relation to particular matters in which the town has an interest.
- Section 19 prohibits a municipal employee from officially participating in matters in which he has a financial interest.
- Section 20 prohibits a municipal employee from having a financial interest in a contract made by the municipality.
- Section 23(b)(2) prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public official from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties.

Recent Enforcement Matters (Cont'd.)

Continued from page 3

participated as a Conservation Commission member in issuing an order of conditions for the project that included the grading that he later performed. Karlson served as a Conservation Commissioner until May 2005. The Conservation Commission's decision concerning the grading requirements on the project was a particular matter in which the town of Rockland had a direct and substantial interest.

In the Matter of Paul Donlan - The Commission approved a joint motion to dismiss charges that Abington Treasurer/Collector Paul Donlan violated the state's conflict of interest law, G.L. c. 268A, by completing forms that allowed Thomas Connolly, a former friend and Donlan's predecessor as Treasurer/Collector, to collect unemployment benefits. The Commission had charged that Donlan had violated G.L. c. 268A, § 23(b)(2) and 23(b)(3). The parties recently discovered evidence indicating that the Division of Unemployment Assistance (DUA) mistakenly permitted Connolly to file a claim despite the fact that, under state law, elected employees are ineligible to receive unemployment compensation. In view of this newly discovered evidence, the parties filed a joint motion to dismiss the charges that Donlan violated G.L. c. 268A §23(b)(2). The motion to dismiss concluded that the facts support the conclusion that Donlan created the appearance of a conflict of interest in violation of G.L. c. 268A §23(b)(3) by participating in approving Connolly's unemployment claim, given their previous relationship, but that this appearance of a conflict of interest alone was not sufficient to warrant a fine. The Commission allowed the joint motion, dismissing the charges against Donlan.

In the Matter of Amy J. Fripp - The Commission resolved public proceedings against former Department of Housing and Community Development (DHCD) Paralegal Amy J. Fripp by concluding that the Commission's Enforcement

Division did not prove its case and ordering the matter dismissed. In July 2003, Fripp, who was employed at the time as a paralegal at DHCD, purchased an affordable housing condominium unit in Lincoln pursuant to the Homeownership Opportunity Program (HOP). HOP is a DHCD program that assists low and moderate income households in buying affordable homes at a discounted price. As part of the purchase, Fripp signed a deed rider restricting the resale of the condominium, as required by HOP. The Commission's Enforcement Division alleged in June 2005 that Fripp violated G.L. c. 268A, § 7 when she purchased the condominium pursuant to HOP while she was a DHCD employee. The Commission's Decision and Order concluded that the Enforcement Division did not prove that the deed rider was "a contract made by a state agency in which the commonwealth or a state agency is an interested party." More specifically, the Commission concluded that the evidence did not establish that the Lincoln Foundation had acted as the DHCD's agent in making the deed rider.

In the Matter of Robert Galewski - The Commission fined Braintree Building Inspector Robert Galewski \$4,000 and required him to pay a civil forfeiture of \$1,500, representing the unjust enrichment he received, for violating the state's conflict of interest law, M.G.L. c. 268A, by using his subordinates and a vendor to perform private work for him without pay. In March 2001, Galewski asked local general contractor Brian McGourty to replace the mailbox at Galewski's personal residence. The total cost for labor and materials was approximately \$285. Galewski did not compensate McGourty for the labor or materials. In addition, on numerous occasions between 2001 and 2006, McGourty or one of his employees plowed snow from Galewski's driveway. Galewski did not compensate McGourty for the snowplowing. Between 2002 and 2006, Galewski issued building

permits and conducted inspections on projects of McGourty, including a 2004 plan for a \$1 million building project in which Galewski requested deferral of Planning Board approval until certain outstanding Building Department concerns were resolved. The Disposition Agreement also discusses Galewski's solicitation of subordinate inspector Michael McGourty (the brother of Brian McGourty) to help transport a dishwasher from a department store to Galewski's personal residence in 2005 and subordinate inspector Eric Erskine to plow Galewski's driveway on numerous occasions between 2001 and 2006. Galewski did not compensate Michael McGourty; he gave Erskine a bottle of liquor and two \$50 gift certificates in appreciation of his services. By using his Building Inspector position to get free services from subordinates and a vendor, Galewski violated § 23(b)(2).

In the Matter of Paul Hoey - The Commission fined MassHighway Civil Engineer Paul Hoey \$2,000 for violating the conflict of interest law by participating in the promotion process where his son was one of the applicants. According to a Disposition Agreement, in February 2006, a Civil Engineer II position was posted. Hoey's son was one of 14 applicants that met the minimum requirements of the position. Hoey did not disclose to his appointing authority that his son, who was currently working as a Civil Engineer I, was a candidate for the position. Hoey chaired the job search committee, selected two subordinates to serve on the committee with him, determined which questions to include in a written civil service test and proctored the exam. He and the other two committee members individually scored the tests; scores were combined to arrive at an overall score for each candidate. Hoey's son scored second highest on the test. Hoey forwarded the scores of the top 12 candidates to the appointing authority. The candidate who scored first accepted the position. By participating in the promotion process where his son was an applicant, Hoey violated § 6.

Continued on page 5

Recent Enforcement Matters (Cont'd.)

Continued from page 4

[In the Matter of William Lynch](#) - The Commission fined Massport Business Analysis Manager William Lynch \$7,000 for violating the state's conflict of interest law by using his office and office equipment to operate a tax preparation business. During the 2005 and 2006 tax seasons, Lynch prepared the majority of his approximately 200 clients' tax returns using his Massport office computer and office facilities. Between February and April each year, he spent approximately 12 hours each week after his state work hours on this private tax work. By extensively using state resources for his private tax preparation business, Lynch violated §23(b)(2).

[In the Matter of Sharon Pollard](#) - The Commission fined former Methuen Mayor Sharon Pollard \$4,000 for violating the conflict of interest law by directing \$200,000 in mitigation funds from Brooks Pharmacy to the Methuen Festival of Trees. The Festival of Trees is a non-profit founded by Pollard to benefit historic preservation in Methuen by restoring stone walls in the historic district. According to the Disposition Agreement, in 2004, Brooks Pharmacy agreed to give Methuen \$650,000 to mitigate traffic problems created by a new store. Pollard instructed Brooks Pharmacy to pay \$450,000 to the city and \$200,000 to the Festival of Trees. When the City Council formally accepted the \$450,000 payment from Brooks Pharmacy in September 2004, Pollard did not disclose the \$200,000 payment

she arranged for the Festival of Trees. In spring 2005, Pollard appeared before the City Council to answer questions that had arisen about the \$200,000 payment. In June 2005, the Festival of Trees returned the \$200,000 it had received to the City. Pollard testified that she believed that the City had already addressed traffic issues in the area and that the funds should go to a variety of civic projects, including wall restoration. By instructing Brooks Pharmacy to give \$200,000 to the Festival of Trees, Pollard used her position to secure for the Festival of Trees an unwarranted privilege in violation of § 23(b)(2). By acting as mayor on a matter in which a private organization she co-founded had a substantial financial interest, Pollard violated § 23(b)(3).

[In the Matter of Shawn S. Winsor](#)

[In the Matter of Robert Baylis](#)

The Commission approved two Disposition Agreements in which Lancaster Board of Health (BOH) chairman Shawn S. Winsor and member Robert Baylis admitted to violating the conflict of interest law by authorizing payment to themselves for mowing the town's landfill. Winsor agreed to pay a \$5,000 civil penalty and \$2,700 civil forfeiture for the money he improperly received and Baylis paid a \$2,000 civil penalty and \$1,800 civil forfeiture for the money he improperly received. According to the Disposition Agreement, in spring 2004 the Lancaster BOH was unsuccessful in finding a vendor to mow the town's landfill. Failure to mow it could result in fines by the

Department of Environmental Protection. Baylis and Winsor decided to mow the landfill themselves. On June 3, Winsor and another BOH member signed a blank voucher authorizing payment for mowing the landfill. Neither the vendor's name nor the amount of the payment was included in the voucher. On June 25, Winsor submitted an invoice from Bowen Landscaping, a company he owned, in the amount of \$4,890. A vendor would usually submit an invoice for work that had already been performed; the landfill was not yet mowed on June 25. The BOH assistant entered "Bowen Landscaping" and the amount on the blank voucher. The town issued a check on July 15. Winsor had the BOH hold the check until August 14, when Baylis, using his own tractor, and Winsor, using a tractor rented by Baylis, mowed the landfill. Winsor then cashed the check from the town for \$4,890, paid the \$388 cost of the rental tractor, gave approximately \$1,800 to Baylis and kept approximately \$2,700. By awarding a contract from which they knew they were to be paid, Winsor and Baylis violated § 19. Winsor also violated § 19 by approving a blank voucher authorizing payment to his company. By receiving pay for mowing the landfill, Winsor and Baylis had a financial interest in a contract with the town and violated § 20. By using his position to improperly secure a \$4,890 contract, Winsor violated § 23(b)(2).

Staff Notes

Ariel Dunlap, who completed her second year at New England School of Law, is working as a part-time summer law clerk in the Commission's Legal Division following her completion of an internship at the Commission that was part of an administrative law clinic. A native of Brookline, she graduated from Tufts University.

Northeastern University student **Katie Bendoraitis** is continuing her internship in the complaint intake section of the Commission's Enforcement Division. Bendoraitis graduated from Tampa Preparatory High School and expects to graduate from Northeastern with a degree in political science in 2010.

Online Training Program

Use of the Commission's [online training program](#) for state employees has grown exponentially thanks to the efforts of the Commonwealth's Human Resources Division. The recently updated New Employee Orientation Guide and Employee Checklist encourage all state employees to complete the program and requires new employees to complete it.

As a result of a May meeting of the Human Resources Advisory Board at which the online training program was presented, use of the program grew from approximately 1,400 users in April to over 19,000 in June.

The Commission plans to implement a similar online training program for municipal employees.